

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 20.08.2015

+ **FAO(OS) 159/2015**

FORBES FACILITY PVT LTD

... Appellant

versus

G.B. PANT HOSPITAL

... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Surekha Raman
For the Respondent : Mr Naushad Ahmed Khan

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. We have heard the learned counsel for the parties. This appeal is directed against the order dated 18.02.2015 passed by a learned Single Judge of this Court in OMP 129/2015 which was a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act').

2. By virtue of the impugned judgment/order, the learned Single Judge has directed the respondent – (i) to release an amount of Rs 1.5 crores to the

petitioner within three weeks, subject to the petitioner (appellant herein) furnishing a bank guarantee of the said amount in favour of the respondent within two weeks from the date of the order with a further direction that the appellant would keep the bank guarantee alive till the culmination of the arbitration proceedings; and (ii) the petitioner/appellant shall also furnish a bank guarantee for Rs 28,76,306/- in favour of the respondent which would be kept alive till the culmination of the arbitration proceedings.

3. The learned counsel for the appellant submitted that the appellant was entitled to the increase in the minimum wages as per the government notification from time to time and on that account, because the respondent had stopped paying the increased rate of minimum wages since April, 2013, an amount of Rs 3.77 crores became due from the respondent.

4. On the other hand, the case of the respondent is that the said increase under the minimum wage was to be to the account of the appellant for which the respondent was not liable. However, the respondent had, for a certain duration of the contract period, paid the said increase and, therefore, an excess payment had been made to the appellant to the extent of Rs 28,76,306/-.

5. After having heard the learned counsel for the parties, it appears that the direction given by the learned Single Judge with regard to the furnishing of a bank guarantee for securing the claim of the respondent to the extent of Rs 28,76,306/- is not justified. The reason for this is that initially, when the work order dated 04.05.2011 was issued, it was immediately followed by the agreement dated 04.05.2011, which contained Clause 2 (XV), which reads as under:-

“(XV) The Service Provider shall abide by and comply with all the relevant laws and statutory requirements covered under Labour Act, Minimum, Wages and Contract Labour (Regulation & Abolition Act 1970) EPF etc. with regard to the hygiene specialists & hygiene supervisors engaged by him for sanitation works. The minimum wages shall be increased as per government notification during the period of the contract. It will be the responsibility of the Service Provider to provide details of manpower deployed by him, in the hospital and to the Labour Deptt. along with the photocopy of the police verification of each staff deployed by him. Being trained worker as hygiene specialists & hygiene supervisors, the person shall be equated as semi skilled worker in terms of Minimum Wages Act, 1948.”

The work order, however, did not appear to be in sync with this clause inasmuch as it contained the following sentence:-

“During the validity of the Rate Contract, no upward revision of the rates shall be allowed.”

Subsequently, perhaps, to keep the work order aligned with the contract, which was signed between the parties, a corrigendum was issued on 08.09.2011, which reads as under:-

“GOVERNMENT OF NATIONAL CAPITAL. TERRITORY OF
DELHI G.B. PANT HOSPITAL J.L. NEHRU MARCH, NEW
DELHI-110 002
(PURCHASE DEPARTMENT)

F. 93-7/GBP/PS/2011-13/Sanitary /8895-8901

Dated: 08.09.2011

CORRIGENDUM

In continuation of the Hospital Order No.81-61/OTE/San/10-11/GBPH/PS/ H-57-74 dated 04.05.2011 the sentence ‘During the validity of rate contract no upward revision of the rates shall be allowed’ in the rate of contract must be read as ‘The minimum wages shall be increased by the hospital as per government notification during the period of Contract’.

All other contents .of the Rate Contract remain unchanged.

This issues with the prior approval of the Director, G.B. Pant Hospital, New Delhi.

PURCHASE OFFICER

Dated: 08.09.2011

F. 93-3/GBP/PS/2011-13/Sanitary/
Copy for information to:-

1. P.A. to Director, GBPH, New Delhi
2. P.A. to MS, GBPH, New Delhi
3. Dr. H.S. Meena, Officer Incharge Sanitation,
(GBPH), New Delhi.
4. DCA, G.B. Pant Hospital, New Delhi

5. Mr. Tyagi, Sanitary Inspector, GBPH, New Delhi.
6. M/s. Forbes Facilities Services, Pvt. Ltd.
7. Guard File.

PURCHASE OFFICER”

6. Thereafter, the parties acted on the contract as also the work order, as modified by the corrigendum, till 12.08.2014, when the respondent issued an order to the following effect:-

“GOVT. OF NCT OF DELHI
GB PANT HOSPITAL NEW DELHI
(ADMN. BRANCH)

No F. 58/Misc./Sanitation/GBPH/Estt./2014-15/10801

Dated: 12.08.2014

ORDER

Vide the Corrigendum letter No. F 93-7/GBP/PS/2011-13/Sanitary 18895-8901 dated 08.09.2011 an order was issued to allow increase in the, contract rate which was not permitted under the-work contract order No. F. 81-61/OTE/San/10-11/GBPH/PS/1667-1674 dated 04.05.2011. Therefore, the said corrigendum letter No. F.93-7/GBPH/PS/2011-13/Sanitary/8895-8901 dated 08.09.2011 is treated abinitio NULL and VOID.

This issues with the prior approval of the Director, GBPH

MEDICAL SUPERINTENDENT
GB PANT HOSPITAL NEW DELHI

No. F. 58/Misc/Sanitation/GBPH/Estt./201 4-15/ Dated

Copy for information:

1. Forbes Facility Services Pvt. Ltd., A-57/4, 2 2nd
Floor, Okhla Industrial Area, Phase-II, New Delhi- 110020.
2. PS to Director, GB Pant Hospital. New Delhi.

3. DCA, GB Pant Hospital, New Delhi i
4. Purchase Officer, Purchase Branch, GBPH.
5. Dr. H.S. Meena, Officer Incharge (Sanitation)
6. Nodal Officer (Sanitation)
7. Shri N.S. Tyagi, Sanitary Inspector, GBPH.
8. Guard File.

MEDICAL SUPERINTENDENT
GB PANT HOSPITAL NEW DELHI”

This was followed by another order dated 28.08.2014, which reads as under:-

“GOVERNMENT OF NCT OF DELHI i)
G.B. PANT HOSPITAL, NEW DELHI
(Administration Branch)

No. F. 58/Misc/Sanitatlon/GBPH/Estt/2014-15/11623-11626

Dated : 28.08.2014

ORDER

In reference to representation dated 26.06.2014 & the subsequent letter dated 25.08.2014 filed by M/s. Forbes Facilities Services Pvt. Ltd. wherein you have raised the issue of outstanding amount of Rs. 1,18,88,253/- (26.08.2014) & Rs. 19561397/- (25.08.2014) on account of various disputes arising in financial year 2013-14 and further requested for immediate settlement of your account.

GAG audit of this hospital was conducted by audit team and while conducting the Audit, auditor has raised an objection that from May 2011 an excess amount has been paid in to the contractor. You are hereby informed that as per record you have been paid an excess amount of Rs. 1,17,30,682/-. Hence you are hereby directed to deposit the excess amount to the hospital after that the hospital will pay your pending/future bill regularly.

You are also requested to continue sanitation services for next two month i.e. Sept. & Oct. 2014 or till the tender finalization, whichever is earlier.

This issues with the prior approval of the competent authority.

MEDICAL SUPERINTENDENT

No. F. 58/Misc./Sanitation /GBPH/Estt.2014-15 Dated

1. Secretary (Health), H&FW Deptt., Delhi Sectt.,
New Delhi.
2. PS to Director/MS. GBPH,
3. M/S. Forbes Facility Services Pvt. Ltd., 457/4, 2nd
Floor, Okhla Industrial Area, Phase -II, New Delhi-110020.

MEDICAL SUPERINTENDENT”

7. The case of the appellant is that once the parties had entered into a contract, which has not been modified, the subsequent orders of 2014 cannot unilaterally change the terms and, particularly, when the parties have acted on the contract as also the work order, as modified by the corrigendum, for almost three years.

8. In these circumstances, we feel that the order passed by the learned Single Judge calls for interference, but only to the extent that the appellant shall not be required to furnish any bank guarantee for the sum of Rs 27,76,306/-. The rest of the order remains the same. The parties are at liberty to move an application under Section 17 of the said Act for any further or other interim directions that they may seek. The Arbitral Tribunal would be free to pass any order that it deems fit, including a modification of

the present order. The observations made in this order are only *prima facie* and shall not be taken into account by the Arbitral Tribunal in deciding the disputes between the parties.

The appeal stands disposed of accordingly.

BADAR DURREZ AHMED, J

AUGUST 20, 2015
SR

SANJEEV SACHDEVA, J

